

By: Senator(s) Nunnelee

To: Insurance; Judiciary

SENATE BILL NO. 2138

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO
2 DEFINE THE TERM "EMPLOYMENT" FOR PURPOSES OF THE MISSISSIPPI
3 EMPLOYMENT SECURITY LAW; AND FOR RELATED PURPOSES.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. Section 71-5-11, Mississippi Code of 1972, is
7 amended as follows:

8 71-5-11. As used in this chapter, unless the context clearly
9 requires otherwise:

10 A. "Base period" means the first four (4) of the last five
11 (5) completed calendar quarters immediately preceding the first
12 day of an individual's benefit year.

13 B. "Benefits" means the money payments payable to an
14 individual, as provided in this chapter, with respect to his
15 unemployment.

16 C. "Benefit year" with respect to any individual means the
17 period beginning with the first day of the first week with respect
18 to which he first files a valid claim for benefits, and ending
19 with the day preceding the same day of the same month in the next
20 calendar year; and, thereafter, the period beginning with the
21 first day of the first week with respect to which he next files
22 his valid claim for benefits, and ending with the day preceding
23 the same day of the same month in the next calendar year. Any
24 claim for benefits made in accordance with Section 71-5-515 shall
25 be deemed to be a "valid claim" for purposes of this subsection if
26 the individual has been paid the wages for insured work required
27 under Section 71-5-511(e).

28 D. "Contributions" means the money payments to the State

29 Unemployment Compensation Fund required by this chapter.

30 E. "Calendar quarter" means the period of three (3)
31 consecutive calendar months ending on March 31, June 30, September
32 30, or December 31.

33 F. "Commission" means the Mississippi Employment Security
34 Commission.

35 G. "Employing unit" means this state or another state or any
36 instrumentalities or any political subdivisions thereof or any of
37 their instrumentalities or any instrumentality of more than one
38 (1) of the foregoing or any instrumentality of any of the
39 foregoing and one or more other states or political subdivisions,
40 any individual or type of organization, including any partnership,
41 association, trust, estate, joint stock company, insurance
42 company, or corporation, whether domestic or foreign, or the
43 receiver, trustee in bankruptcy, trustee or successor thereof, or
44 the legal representative of a deceased person, which has or had in
45 its employ one or more individuals performing services for it
46 within this state. All individuals performing services within
47 this state for any employing unit which maintains two (2) or more
48 separate establishments within this state shall be deemed to be
49 employed by a single employing unit for all the purposes of this
50 chapter. Each individual employed to perform or to assist in
51 performing the work of any agent or employee of an employing unit
52 shall be deemed to be employed by such employing unit for all
53 purposes of this chapter, whether such individual was hired or
54 paid directly by such employing unit or by such agent or employee,
55 provided the employing unit had actual or constructive knowledge
56 of the work. All individuals performing services in the employ of
57 an elected fee-paid county official, other than those related by
58 blood or marriage within the third degree computed by the rule of
59 the civil law to such fee-paid county official, shall be deemed to
60 be employed by such county as the employing unit for all the
61 purposes of this chapter. For purposes of defining an "employing
62 unit" which shall pay contributions on remuneration paid to

63 individuals, if two (2) or more related corporations concurrently
64 employ the same individual and compensate such individual through
65 a common paymaster which is one of such corporations, then each
66 such corporation shall be considered to have paid as remuneration
67 to such individual only the amounts actually disbursed by it to
68 such individual and shall not be considered to have paid as
69 remuneration to such individual such amounts actually disbursed to
70 such individual by another of such corporations.

71 H. "Employer" means:

72 (1) Any employing unit which,

73 (a) In any calendar quarter in either the current
74 or preceding calendar year paid for service in employment wages of
75 One Thousand Five Hundred Dollars (\$1,500.00) or more, except as
76 provided in paragraph (9) of this subsection, or

77 (b) For some portion of a day in each of twenty
78 (20) different calendar weeks, whether or not such weeks were
79 consecutive, in either the current or the preceding calendar year
80 had in employment at least one (1) individual (irrespective of
81 whether the same individual was in employment in each such day),
82 except as provided in paragraph (9) of this subsection;

83 (2) Any employing unit for which service in employment,
84 as defined in subsection I(3) of this section, is performed;

85 (3) Any employing unit for which service in employment,
86 as defined in subsection I(4) of this section, is performed;

87 (4) (a) Any employing unit for which agricultural
88 labor, as defined in subsection I(6) of this section, is
89 performed;

90 (b) Any employing unit for which domestic service
91 in employment, as defined in subsection I(7) of this section, is
92 performed;

93 (5) Any individual or employing unit which acquired the
94 organization, trade, business, or substantially all the assets
95 thereof, of another which at the time of such acquisition was an
96 employer subject to this chapter;

97 (6) Any individual or employing unit which acquired its
98 organization, trade, business, or substantially all the assets
99 thereof, from another employing unit, if the employment record of
100 the acquiring individual or employing unit subsequent to such
101 acquisition, together with the employment record of the acquired
102 organization, trade, or business prior to such acquisition, both
103 within the same calendar year, would be sufficient to constitute
104 an employing unit an employer subject to this chapter under
105 paragraph (1) or (3) of this subsection;

106 (7) Any employing unit which, having become an employer
107 under paragraph (1), (3), (5) or (6) of this subsection or under
108 any other provisions of this chapter, has not, under Section
109 71-5-361, ceased to be an employer subject to this chapter; or

110 (8) For the effective period of its election pursuant
111 to Section 71-5-361(3), any other employing unit which has elected
112 to become subject to this chapter.

113 (9) (a) In determining whether or not an employing
114 unit for which service other than domestic service is also
115 performed is an employer under paragraph (1) or (4)(a) of this
116 subsection, the wages earned or the employment of an employee
117 performing domestic service, shall not be taken into account.

118 (b) In determining whether or not an employing
119 unit for which service other than agricultural labor is also
120 performed is an employer under paragraph (1) or (4)(b) of this
121 subsection, the wages earned or the employment of an employee
122 performing services in agricultural labor shall not be taken into
123 account. If an employing unit is determined an employer of
124 agricultural labor, such employing unit shall be determined an
125 employer for purposes of paragraph (1) of this subsection.

126 (10) All entities utilizing the services of any employee
127 leasing firm shall be considered the employer of the individuals
128 leased from the employee leasing firm. Temporary help firms shall
129 be considered the employer of the individuals they provide to
130 perform services for other individuals or organizations.

131 I. "Employment" means and includes:

132 (1) Any service performed, which was employment as
133 defined in this section and, subject to the other provisions of
134 this subsection, including service in interstate commerce,
135 performed for wages or under any contract of hire, written or
136 oral, express or implied.

137 (2) Services performed for remuneration for a
138 principal:

139 (a) As an agent-driver or commission-driver
140 engaged in distributing meat products, vegetable products, fruit
141 products, bakery products, beverages (other than milk), or laundry
142 or dry cleaning services;

143 (b) As a traveling or city salesman, other than as
144 an agent-driver or commission-driver, engaged upon a full-time
145 basis in the solicitation on behalf of, and the transmission to, a
146 principal (except for sideline sales activities on behalf of some
147 other person) of orders from wholesalers, retailers, contractors,
148 or operator of hotels, restaurants, or other similar
149 establishments for merchandise for resale or supplies for use in
150 their business operations.

151 Provided, that for purposes of this subsection, the term
152 "employment" shall include services described in subsections
153 I(2)(a) and (b) of this section, only if:

154 (i) The contract of service contemplates that
155 substantially all of the services are to be performed personally
156 by such individual;

157 (ii) The individual does not have a
158 substantial investment in facilities used in connection with the
159 performance of the services (other than in facilities for
160 transportation); and

161 (iii) The services are not in the nature of a
162 single transaction that is not part of a continuing relationship
163 with the person for whom the services are performed.

164 (3) Service performed in the employ of this state or

165 any of its instrumentalities or any political subdivision thereof
166 or any of its instrumentalities or any instrumentality of more
167 than one (1) of the foregoing or any instrumentality of any of the
168 foregoing and one or more other states or political subdivisions;
169 provided that such service is excluded from "employment" as
170 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)
171 of that act and is not excluded from "employment" under subsection
172 I(5) of this section.

173 (4) (a) Services performed in the employ of a
174 religious, charitable, educational, or other organization, but
175 only if the service is excluded from "employment" as defined in
176 the Federal Unemployment Tax Act, 26 USCA Sec. 3306(c)(8), and

177 (b) The organization had four (4) or more
178 individuals in employment for some portion of a day in each of
179 twenty (20) different weeks, whether or not such weeks were
180 consecutive, within the current or preceding calendar year,
181 regardless of whether they were employed at the same moment of
182 time.

183 (5) For the purposes of subsections I(3) and (4) of
184 this section, the term "employment" does not apply to service
185 performed:

186 (a) In the employ of:

187 (i) A church or convention or association of
188 churches; or

189 (ii) An organization which is operated
190 primarily for religious purposes and which is operated,
191 supervised, controlled, or principally supported by a church or
192 convention or association of churches; or

193 (b) By a duly ordained, commissioned, or licensed
194 minister of a church in the exercise of his ministry, or by a
195 member of a religious order in the exercise of duties required by
196 such order; or

197 (c) In the employ of a governmental entity
198 referred to in subsection I(3), if such service is performed by an

199 individual in the exercise of duties:

200 (i) As an elected official;

201 (ii) As a member of a legislative body, or a
202 member of the judiciary, of a state or political subdivision;

203 (iii) As a member of the State National Guard
204 or Air National Guard;

205 (iv) As an employee serving on a temporary
206 basis in case of fire, storm, snow, earthquake, flood or similar
207 emergency;

208 (v) In a position which, under or pursuant to
209 the laws of this state, is designated as:

210 1. A major nontenured policy-making or
211 advisory position, or

212 2. A policy-making or advisory position
213 the performance of the duties of which ordinarily does not require
214 more than eight (8) hours per week; or

215 (d) In a facility conducted for the purpose of
216 carrying out a program of rehabilitation for individuals whose
217 earning capacity is impaired by age or physical or mental
218 deficiency or injury, or providing remunerative work for
219 individuals who because of their impaired physical or mental
220 capacity cannot be readily absorbed in the competitive labor
221 market, by an individual receiving such rehabilitation or
222 remunerative work; or

223 (e) By an inmate of a custodial or penal
224 institution; or

225 (f) As part of an unemployment work-relief or
226 work-training program assisted or financed in whole or in part by
227 any federal agency or agency of a state or political subdivision
228 thereof, by an individual receiving such work relief or work
229 training, unless coverage of such service is required by federal
230 law or regulation.

231 (6) Service performed by an individual in agricultural
232 labor as defined in paragraph (15)(a) of this subsection when:

233 (a) Such service is performed for a person who:
234 (i) During any calendar quarter in either the
235 current or the preceding calendar year paid remuneration in cash
236 of Twenty Thousand Dollars (\$20,000.00) or more to individuals
237 employed in agricultural labor, or

238 (ii) For some portion of a day in each of
239 twenty (20) different calendar weeks, whether or not such weeks
240 were consecutive, in either the current or the preceding calendar
241 year, employed in agricultural labor ten (10) or more individuals,
242 regardless of whether they were employed at the same moment of
243 time.

 (b) For the purposes of subsection I(6) any
244 individual who is a member of a crew furnished by a crew leader to
245 perform service in agricultural labor for any other person shall
246 be treated as an employee of such crew leader:

 (i) If such crew leader holds a valid
248 certificate of registration under the Farm Labor Contractor
249 Registration Act of 1963; or substantially all the members of such
250 crew operate or maintain tractors, mechanized harvesting or crop
251 dusting equipment, or any other mechanized equipment, which is
252 provided by such crew leader; and

 (ii) If such individual is not an employee of
254 such other person within the meaning of subsection I(1).

 (c) For the purpose of subsection I(6), in the
256 case of any individual who is furnished by a crew leader to
257 perform service in agricultural labor for any other person and who
258 is not treated as an employee of such crew leader under paragraph
259 (6)(b) of this subsection:

 (i) Such other person and not the crew leader
261 shall be treated as the employer of such individual; and

 (ii) Such other person shall be treated as
263 having paid cash remuneration to such individual in an amount
264 equal to the amount of cash remuneration paid to such individual
265 by the crew leader (either on his own behalf or on behalf of such

266 other person) for the service in agricultural labor performed for
267 such other person.

268 (d) For the purposes of subsection I(6) the term
269 "crew leader" means an individual who:

270 (i) Furnishes individuals to perform service
271 in agricultural labor for any other person;

272 (ii) Pays (either on his own behalf or on
273 behalf of such other person) the individuals so furnished by him
274 for the service in agricultural labor performed by them; and

275 (iii) Has not entered into a written
276 agreement with such other person under which such individual is
277 designated as an employee of such other person.

278 (7) The term "employment" shall include domestic
279 service in a private home, local college club or local chapter of
280 a college fraternity or sorority performed for an employing unit
281 which paid cash remuneration of One Thousand Dollars (\$1,000.00)
282 or more in any calendar quarter in the current or the preceding
283 calendar year to individuals employed in such domestic service.
284 For the purpose of this subsection, the term "employment" does not
285 apply to service performed as a "sitter" at a hospital in the
286 employ of an individual.

287 (8) An individual's entire service, performed within or
288 both within and without this state, if:

289 (a) The service is localized in this state; or

290 (b) The service is not localized in any state but
291 some of the service is performed in this state, and

292 (i) The base of operations or, if there is no
293 base of operations, the place from which such service is directed
294 or controlled is in this state; or

295 (ii) The base of operations or place from
296 which such service is directed or controlled is not in any state
297 in which some part of the service is performed, but the
298 individual's residence is in this state.

299 (9) Services not covered under paragraph (8) of this

300 subsection and performed entirely without this state, with respect
301 to no part of which contributions are required and paid under an
302 unemployment compensation law of any other state or of the federal
303 government, shall be deemed to be employment subject to this
304 chapter if the individual performing such services is a resident
305 of this state and the commission approves the election of the
306 employing unit for whom such services are performed that the
307 entire service of such individual shall be deemed to be employment
308 subject to this chapter.

309 (10) Service shall be deemed to be localized within a
310 state if:

311 (a) The service is performed entirely within such
312 state; or

313 (b) The service is performed both within and
314 without such state, but the service performed without such state
315 is incidental to the individual's service within the state; for
316 example, is temporary or transitory in nature or consists of
317 isolated transactions.

318 (11) The services of an individual who is a citizen of
319 the United States, performed outside the United States (except in
320 Canada), in the employ of an American employer (other than service
321 which is deemed "employment" under the provisions of paragraph
322 (8), (9) or (10) of this subsection or the parallel provisions of
323 another state's law), if:

324 (a) The employer's principal place of business in
325 the United States is located in this state; or

326 (b) The employer has no place of business in the
327 United States, but

328 (i) The employer is an individual who is a
329 resident of this state; or

330 (ii) The employer is a corporation which is
331 organized under the laws of this state; or

332 (iii) The employer is a partnership or a
333 trust and the number of the partners or trustees who are residents

334 of this state is greater than the number who are residents of any
335 one (1) other state; or

336 (c) None of the criteria of subparagraphs (a) and
337 (b) of this paragraph are met but the employer has elected
338 coverage in this state or, the employer having failed to elect
339 coverage in any state, the individual has filed a claim for
340 benefits, based on such service, under the law of this state; or

341 (d) An "American employer," for purposes of this
342 paragraph, means a person who is:

343 (i) An individual who is a resident of the
344 United States; or

345 (ii) A partnership if two-thirds (2/3) or
346 more of the partners are residents of the United States; or

347 (iii) A trust, if all of the trustees are
348 residents of the United States; or

349 (iv) A corporation organized under the laws
350 of the United States or of any state.

351 (12) All services performed by an officer or member of
352 the crew of an American vessel on or in connection with such
353 vessel, if the operating office from which the operations of such
354 vessel operating on navigable waters within, or within and
355 without, the United States are ordinarily and regularly
356 supervised, managed, directed, and controlled is within this
357 state; notwithstanding the provisions of subsection I(8).

358 (13) Service with respect to which a tax is required to
359 be paid under any federal law imposing a tax against which credit
360 may be taken for contributions required to be paid into a state
361 unemployment fund, or which as a condition for full tax credit
362 against the tax imposed by the Federal Unemployment Tax Act, 26
363 USCA Sec. 3301 et seq., is required to be covered under this
364 chapter, notwithstanding any other provisions of this subsection.

365 (14) Notwithstanding the other provisions of this
366 chapter, "employment" shall mean services performed by an
367 individual for wages whether or not the common-law relationship of

368 master and servant exists, unless and until it is shown to the
369 satisfaction of the commission that:

370 (a) The person possesses or has applied for a
371 federal employer identification number or Social Security number,
372 or in the alternative, has agreed in writing to carry out the
373 responsibilities imposed on employers under this chapter;

374 (b) The person has control and discretion over the
375 means and manner or performance of the work in achieving the
376 result of the work;

377 (c) The person has control over the time when the
378 work is performed, and the time performance is not dictated by the
379 employer. However, this criterion does not prohibit the employer
380 from reaching agreement with the person as to completion schedule,
381 range of work hours and maximum number of work hours to be
382 provided by the person, and in the case of entertainment, the time
383 such entertainment is to be presented;

384 (d) The person holds himself or herself out to be
385 in business for himself or herself; and

386 (e) The person is not required to work exclusively
387 for the employer, or, if not exempt from the definition of
388 "employment" under this subsection (14), the person signs a
389 written contract with the employer which:

390 (i) States the employer's intent to hire the
391 person as an independent contractor; and

392 (ii) States that the person is presumed to be
393 an employee unless all provisions specified in paragraphs (a)
394 through (e) of this subsection (14) are met, in which case the
395 person shall be classified as an independent contractor; and

396 (iii) Explicitly and accurately details the
397 provisions specified in paragraphs (a) through (e) of this
398 subsection (14) in such a way that the criteria is clear and fully
399 understandable without having to physically reference this section
400 within state statutes.

401 (15) The term "employment" shall not include:

402 (a) Agricultural labor, except as provided in
403 subsection I(6) of this section. The term "agricultural labor"
404 includes all services performed:

405 (i) On a farm or in a forest in the employ of
406 any employing unit in connection with cultivating the soil, in
407 connection with cutting, planting, deadening, marking or otherwise
408 improving timber, or in connection with raising or harvesting any
409 agricultural or horticultural commodity, including the raising,
410 shearing, feeding, caring for, training, and management of
411 livestock, bees, poultry, fur-bearing animals, and wildlife;

412 (ii) In the employ of the owner or tenant or
413 other operator of a farm, in connection with the operation,
414 management, conservation, improvement, or maintenance of such farm
415 and its tools and equipment, or in salvaging timber or clearing
416 land of brush and other debris left by a hurricane, if the major
417 part of such service is performed on a farm;

418 (iii) In connection with the production or
419 harvesting of naval stores products or any commodity defined in
420 the Federal Agricultural Marketing Act, 12 USCA Sec. 1141j(g), or
421 in connection with the raising or harvesting of mushrooms, or in
422 connection with the ginning of cotton, or in connection with the
423 operation or maintenance of ditches, canals, reservoirs, or
424 waterways not owned or operated for profit, used exclusively for
425 supplying and storing water for farming purposes;

426 (iv) (A) In the employ of the operator of a
427 farm in handling, planting, drying, packing, packaging,
428 processing, freezing, grading, storing, or delivering to storage
429 or to market or to a carrier for transportation to market, in its
430 unmanufactured state, any agricultural or horticultural commodity;
431 but only if such operator produced more than one-half (1/2) of the
432 commodity with respect to which such service is performed;

433 (B) In the employ of a group of
434 operators of farms (or a cooperative organization of which such
435 operators are members) in the performance of service described in

436 subparagraph (A), but only if such operators produced more than
437 one-half (1/2) of the commodity with respect to which such service
438 is performed;

439 (C) The provisions of subparagraphs (A)
440 and (B) shall not be deemed to be applicable with respect to
441 service performed in connection with commercial canning or
442 commercial freezing or in connection with any agricultural or
443 horticultural commodity after its delivery to a terminal market
444 for distribution for consumption;

445 (v) On a farm operated for profit if such
446 service is not in the course of the employer's trade or business;

447 (vi) As used in paragraph (15)(a) of this
448 subsection, the term "farm" includes stock, dairy, poultry, fruit,
449 fur-bearing animals, and truck farms, plantations, ranches,
450 nurseries, ranges, greenhouses, or other similar structures used
451 primarily for the raising of agricultural or horticultural
452 commodities, and orchards.

453 (b) Domestic service in a private home, local
454 college club, or local chapter of a college fraternity or
455 sorority, except as provided in subsection I(7) of this section,
456 or service performed as a "sitter" at a hospital in the employ of
457 an individual.

458 (c) Casual labor not in the usual course of the
459 employing unit's trade or business.

460 (d) Service performed by an individual in the
461 employ of his son, daughter, or spouse, and service performed by a
462 child under the age of twenty-one (21) in the employ of his father
463 or mother.

464 (e) Service performed in the employ of the United
465 States government or of an instrumentality wholly owned by the
466 United States; except that if the Congress of the United States
467 shall permit states to require any instrumentalities of the United
468 States to make payments into an unemployment fund under a state
469 unemployment compensation act, then to the extent permitted by

470 Congress and from and after the date as of which such permission
471 becomes effective, all of the provisions of this chapter shall be
472 applicable to such instrumentalities and to services performed by
473 employees for such instrumentalities in the same manner, to the
474 same extent, and on the same terms as to all other employers and
475 employing units. If this state should not be certified under the
476 Federal Unemployment Tax Act, 26 USCA Sec. 3304(c), for any year,
477 then the payment required by such instrumentality with respect to
478 such year shall be deemed to have been erroneously collected and
479 shall be refunded by the commission from the fund in accordance
480 with the provisions of Section 71-5-383.

481 (f) Service performed in the employ of an
482 "employer" as defined by the Railroad Unemployment Insurance Act,
483 45 USCA Sec. 351(a), or as an "employee representative" as defined
484 by the Railroad Unemployment Insurance Act, 45 USCA Sec. 351(f),
485 and service with respect to which unemployment compensation is
486 payable under an unemployment compensation system for maritime
487 employees, or under any other unemployment compensation system
488 established by an act of Congress; provided that the commission is
489 hereby authorized and directed to enter into agreements with the
490 proper agencies under such act or acts of Congress, which
491 agreements shall become effective ten (10) days after publication
492 thereof in the manner provided in Section 71-5-117 for general
493 rules, to provide reciprocal treatment to individuals who have,
494 after acquiring potential rights to benefits under this chapter,
495 acquired rights to unemployment compensation under such act or
496 acts of Congress or who have, after acquiring potential rights to
497 unemployment compensation under such act or acts of Congress,
498 acquired rights to benefits under this chapter.

499 (g) Service performed in any calendar quarter in
500 the employ of any organization exempt from income tax under the
501 Internal Revenue Code, 26 USCA Sec. 501(a) (other than an
502 organization described in 26 USCA Sec. 401(a)), or exempt from
503 income tax under 26 USCA Sec. 521 if the remuneration for such

504 service is less than Fifty Dollars (\$50.00).

505 (h) Service performed in the employ of a school,
506 college, or university if such service is performed:

507 (i) By a student who is enrolled and is
508 regularly attending classes at such school, college, or
509 university, or

510 (ii) By the spouse of such a student if such
511 spouse is advised, at the time such spouse commences to perform
512 such service, that

513 (A) The employment of such spouse to
514 perform such service is provided under a program to provide
515 financial assistance to such student by such school, college, or
516 university, and

517 (B) Such employment will not be covered
518 by any program of unemployment insurance.

519 (i) Service performed by an individual under the
520 age of twenty-two (22) who is enrolled at a nonprofit or public
521 educational institution which normally maintains a regular faculty
522 and curriculum and normally has a regularly organized body of
523 students in attendance at the place where its educational
524 activities are carried on, as a student in a full-time program
525 taken for credit at such institution, which combines academic
526 instruction with work experience, if such service is an integral
527 part of such program and such institution has so certified to the
528 employer, except that this subparagraph shall not apply to service
529 performed in a program established for or on behalf of an employer
530 or group of employers.

531 (j) Service performed in the employ of a hospital,
532 if such service is performed by a patient of the hospital, as
533 defined in subsection L of this section.

534 (k) Service performed as a student nurse in the
535 employ of a hospital or a nurses' training school by an individual
536 who is enrolled and is regularly attending classes in a nurses'
537 training school chartered or approved pursuant to state law; and

538 services performed as an intern in the employ of a hospital by an
539 individual who has completed a four-year course in a medical
540 school chartered or approved pursuant to state law.

541 (l) Service performed by an individual as an
542 insurance agent or as an insurance solicitor, if all such service
543 performed by such individual is performed for remuneration solely
544 by way of commission.

545 (m) Service performed by an individual under the
546 age of eighteen (18) in the delivery or distribution of newspapers
547 or shopping news, not including delivery or distribution to any
548 point for subsequent delivery or distribution.

549 (n) If the services performed during one-half
550 (1/2) or more of any pay period by an employee for the employing
551 unit employing him constitute employment, all the services of such
552 employee for such period shall be deemed to be employment; but if
553 the services performed during more than one-half (1/2) of any such
554 pay period by an employee for the employing unit employing him do
555 not constitute employment, then none of the services of such
556 employee for such period shall be deemed to be employment. As
557 used in this subsection the term "pay period" means a period (of
558 not more than thirty-one (31) consecutive days) for which a
559 payment of remuneration is ordinarily made to the employee by the
560 employing unit employing him.

561 (o) Service performed by an individual who is a
562 CETA/PSE (Comprehensive Employment Training Act/Public Service
563 Employment) participant unless coverage of such service is
564 required by federal law or regulation.

565 (p) Service performed by a barber or beautician
566 whose work station is leased to him or her by the owner of the
567 shop in which he or she works and who is compensated directly by
568 the patrons he or she serves and who is free from direction and
569 control by the lessor.

570 J. "Employment office" means a free public employment office
571 or branch thereof, operated by this state or maintained as a part

572 of the state controlled system of public employment offices.

573 "Public employment service" means the operation of a program
574 that offers free placement and referral services to applicants and
575 employers, including job development.

576 K. "Fund" means the Unemployment Compensation Fund
577 established by this chapter, to which all contributions required
578 and from which all benefits provided under this chapter shall be
579 paid.

580 L. "Hospital" means an institution which has been licensed,
581 certified, or approved by the Mississippi Commission on Hospital
582 Care as a hospital.

583 M. "Institution of higher learning," for the purposes of
584 this section, means an educational institution which:

585 (1) Admits as regular students only individuals having a
586 certificate of graduation from a high school, or the recognized
587 equivalent of such a certificate;

588 (2) Is legally authorized in this state to provide a
589 program of education beyond high school;

590 (3) Provides an educational program for which it awards
591 a bachelor's or higher degree, or provides a program which is
592 acceptable for full credit toward such a degree, a program of
593 postgraduate or postdoctoral studies, or a program of training to
594 prepare students for gainful employment in a recognized
595 occupation;

596 (4) Is a public or other nonprofit institution;

597 (5) Notwithstanding any of the foregoing provisions of
598 this subsection, all colleges and universities in this state are
599 institutions of higher learning for purposes of this section.

600 N. (1) "State" includes, in addition to the states of the
601 United States of America, the District of Columbia, Commonwealth
602 of Puerto Rico and the Virgin Islands.

603 (2) The term "United States" when used in a geographical
604 sense includes the states, the District of Columbia, Commonwealth
605 of Puerto Rico and the Virgin Islands.

606 (3) The provisions of subsections (1) and (2) of
607 paragraph N, as including the Virgin Islands, shall become
608 effective on the day after the day on which the United States
609 Secretary of Labor approves for the first time under Section
610 3304(a) of the Internal Revenue Code of 1954 an unemployment
611 compensation law submitted to the secretary by the Virgin Islands
612 for such approval.

613 O. "Unemployment."

614 (1) An individual shall be deemed "unemployed" in any
615 week during which he performs no services and with respect to
616 which no wages are payable to him, or in any week of less than
617 full-time work if the wages payable to him with respect to such
618 week are less than his weekly benefit amount as computed and
619 adjusted in Section 71-5-505. The commission shall prescribe
620 regulations applicable to unemployed individuals, making such
621 distinctions in the procedure as to total unemployment, part-total
622 unemployment, partial unemployment of individuals attached to
623 their regular jobs, and other forms of short-time work, as the
624 commission deems necessary.

625 (2) An individual's week of total unemployment shall be
626 deemed to commence only after his registration at an employment
627 office, except as the commission may by regulation otherwise
628 prescribe.

629 P. (1) "Wages" means all remuneration for personal
630 services, including commissions and bonuses and the cash value of
631 all remuneration in any medium other than cash, except that
632 "wages," for purposes of determining employer's coverage and
633 payment of contributions for agricultural and domestic service
634 means cash remuneration only. The reasonable cash value of
635 remuneration in any medium other than cash shall be estimated and
636 determined in accordance with rules prescribed by the commission;
637 provided, that the term "wages" shall not include:

638 (a) The amount of any payment made to, or on
639 behalf of, an employee under a plan or system established by an

640 employer which makes provision for his employees generally or for
641 a class or classes of his employees (including any amount paid by
642 an employer for insurance or annuities, or into a fund, to provide
643 for any such payment), on account of:

644 (i) Retirement, or
645 (ii) Sickness or accident disability, or
646 (iii) Medical or hospitalization expenses in
647 connection with sickness or actual disability, or

648 (iv) Death, provided the employee:

649 (A) Has not the option to receive,
650 instead of provision for such death benefit, any part of such
651 payment or, if such death benefit is insured, any part of the
652 premiums (or contributions to premiums) paid by his employer, and

653 (B) Has not the right, under the
654 provisions of the plan or system or policy of insurance providing
655 for such death benefit, to assign such benefit or to receive a
656 cash consideration in lieu of such benefit, either upon his
657 withdrawal from the plan or system providing for such benefit or
658 upon termination of such plan or system or policy of insurance or
659 of his employment with such employer;

660 (b) Dismissal payments which the employer is not
661 legally required to make;

662 (c) Payment by an employer (without deduction from
663 the remuneration of an employee) of the tax imposed by the
664 Internal Revenue Code, 26 USCA Sec. 3101;

665 (d) From and after January 1, 1992, the amount of
666 any payment made to or on behalf of an employee for a "cafeteria"
667 plan, which meets the following requirements:

668 (i) Qualifies under Section 125 of the
669 Internal Revenue Code;

670 (ii) Covers only employees;

671 (iii) Covers only noncash benefits;

672 (iv) Does not include deferred compensation

673 plans.

674 (2) [Not enacted].

675 Q. "Week" means calendar week or such period of seven (7)
676 consecutive days as the commission may by regulation prescribe.
677 The commission may by regulation prescribe that a week shall be
678 deemed to be in, within, or during any benefit year which includes
679 any part of such week.

680 R. "Insured work" means "employment" for "employers."

681 S. The term "includes" and "including," when used in a
682 definition contained in this chapter, shall not be deemed to
683 exclude other things otherwise within the meaning of the term
684 defined.

685 T. "Employee leasing arrangement" means any agreement
686 between an employee leasing firm and a client, whereby specified
687 client responsibilities such as payment of wages, reporting of
688 wages for unemployment insurance purposes, payment of unemployment
689 insurance contributions and other such administrative duties are
690 to be performed by an employee leasing firm, on an ongoing basis.

691 U. "Employee leasing firm" means any entity which provides
692 specified duties for a client company such as payment of wages,
693 reporting of wages for unemployment insurance purposes, payment of
694 unemployment insurance contributions and other administrative
695 duties, in connection with the client's employees, that are
696 directed and controlled by the client and that are providing
697 ongoing services for the client.

698 V. "Temporary help firm" means an entity which hires its own
699 employees and provides those employees to other individuals or
700 organizations to perform some service, to support or supplement
701 the existing work force in special situations such as employee
702 absences, temporary skill shortages, seasonal workloads and
703 special assignments and projects, with the expectation that the
704 worker's position will be terminated upon the completion of the
705 specified task or function.

706 SECTION 2. This act shall take effect and be in force from
707 and after July 1, 1999.